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Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In Re:	)	Case No. 02-20218
	)	
FRANK CHAPIN and SYDNEY	)	
GUTIERREZ-CHAPIN	)	OBJECTION TO MOTION FOR ORDER
	)	CLARIFYING INAPPLICABILITY OF
	)	AUTOMATIC STAY AND REQUEST
Debtors.	)	FOR HEARING
	)	

COMES NOW Frank L. Chapin and Sydney L. Gutierrez Chapin, by and through undersigned counsel, Bruce A. Anderson, of Elsaesser Jarzabek Anderson Marks Elliott & McHugh, Chtd., and in opposition to the above-entitled Motion, states as follows:

1. The Bonner County case against Financial Management Services, Inc., S and F, LLC, Frank L. Chapin, P.A. and the Hoodoo Mountain Ranchette Trust ("Chapin entities") at Case No. CV 02-01655, First District Court, Bonner County, Idaho, ("Bonner County case"), is based on the following, "Plaintiff's claim against the Defendants is based upon losses caused by Frank L. Chapin during the administration of probate matters before the Superior Court of Spokane County . . ." (Affidavit of Tamara W. Murock, ¶12). This is further set out in paragraph 3.27 of the Complaint and Demand for Jury Trial in the Bonner County case, attached hereto as Exhibit "A", which states

OBJECTION TO MOTION FOR ORDER  
CLARIFYING INAPPLICABILITY OF AUTOMATIC STAY- 1

18  
ORIGINAL

in part, "On March 22, 2002, the Court entered summary judgment in favor of the beneficiaries of the Estate of Christina Leaf against Dr. Leaf. Dr. Leaf faces potential exposure of \$1,250,000 as a result of Mr. Chapin's conduct in administering the Estates of Wilbur and Christina Leaf."

2. The Bonner County case has largely been dormant while negotiations between Frederick Leaf and the Chapins have taken place in the bankruptcy case. Subsequent to the conversion of the case to a case under Chapter 7, Leaf sought entry of an Order of Default in the Bonner County case and such was granted on August 12, 2003.

3. The debt that Leaf is attempting to collect is a debt from the Debtor, Frank Chapin, to Frederick Leaf. It is clear from the pleadings filed in the Bonner County case that any claim against Financial Management Services, Inc., S and F, LLC, Frank L. Chapin, P.A. and the Hoodoo Mountain Ranchette Trust are claims derivative from that claim against Frank L. Chapin. Leaf does not hold any claims against the Chapin entities separate and apart from the claims asserted against Debtors, which are also asserted in the bankruptcy case.

4. The issues raised in the Bonner County cases are the same issues raised in the Adversary Proceedings at Adv. Pro. Nos. 02-6135, 02-6136 and 02-6137. Leaf has asserted a constructive trust exists in the adversary proceeding at Adv. Pro. No. 02-6137.

5. A stay violation exists, *inter alia*, when an action is commenced to recover claims against the debtor that arose before the commencement of the case, when acts are taken to obtain possession of property of the estate or exercise control over property of the estate, and when acts are taken to create and perfect or enforce any liens against the property of the debtor. 11 U.S.C. § 362(a)(1),(3) and (5).

6. The acts of Leaf are, in essence, acts to recover claims allegedly owed by Debtors to Leaf, and which arose before the commencement of the case. Further, such acts, if the constructive trusts are found, will effectively place the now unsecured creditor, Leaf, in a position of a quasi-secured creditor by allowing Leaf to become beneficiary of such constructive trusts.

7. The Chapter 7 Trustee has not yet performed an analysis of whether or not the Chapin entities may or may not be the alter-egos of the Debtors. It would appear that any alter-ego claim would be property of the estate, and would be subject to the automatic stay. The stock and membership interests of the Chapin entities are clearly property of the estate.

8. Pursuant to 11 U.S.C. 105(a), the Court has broad powers to carry out, enforce or implement orders or prevent an abuse of process. It would appear that Leaf's attempts to better position himself with respect to the debts allegedly owed by Frank Chapin would act to the detriment of other creditors of the estate. This argument is further enforced when the constructive trusts Leaf seeks to have declared, will be declared by default and not by full and fair judicial determination.

9. Given the complex issues involving the Debtors, the Chapin entities, and Leaf Estate parties, it would appear appropriate that a global stay be ordered to enable the Chapter 7 Trustee to determine what, if any, interest the Estate has in the underlying assets of the Chapin entities. 11 U.S.C. §105(a); *In re National Century Financial Enterprises, Inc.*, \_\_\_\_\_ B.R. \_\_\_\_\_ (Bankr. S.D. Ohio 2003).

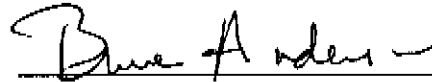
WHEREFORE, Frank L. Chapin and Sydney Gutierrez Chapin pray that Leaf's Motion for Order Clarifying Inapplicability of Automatic Stay be denied, and that the Court determine the stay applies as to all efforts to collect debts of the Chapins against Financial Management Services, Inc., S and F, LLC, Frank L. Chapin, P.A. and Hoodoo Mountain Ranchette Trust. Debtors further

OBJECTION TO MOTION FOR ORDER  
CLARIFYING INAPPLICABILITY OF AUTOMATIC STAY- 3

request a hearing on this matter and the ability to present further testimony, exhibits, and briefing, as necessary.

DATED this 20<sup>th</sup> day of October, 2003.

ELSAESSER JARZABEK ANDERSON  
MARKS ELLIOTT & McHUGH, CHTD.

  
\_\_\_\_\_  
Bruce A. Anderson  
Attorneys for Debtors

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of October, 2003 I caused to be served a true and correct copy of the foregoing OBJECTION TO MOTION FOR ORDER CLARIFYING INAPPLICABILITY OF AUTOMATIC STAY by the method indicated below, and addressed to the following:

C. Barry Zimmerman  
Chapter 7 Trustee  
P.O. Box 1240  
Coeur d'Alene, ID 83816  
664-4737

☒ U.S. MAIL  
☐ HAND DELIVERED  
☐ OVERNIGHT MAIL  
☒ FACSIMILE

James H. Magnuson  
Attorney for Chapter 7 Trustee  
P.O. Box 2288  
Coeur d'Alene, ID 83816  
666-1700

☒ U.S. MAIL  
☐ HAND DELIVERED  
☐ OVERNIGHT MAIL  
☒ FACSIMILE

John Rizzardi  
Cairncross & Hempelmann, P.S.  
524 Second Ave., Suite 500  
Seattle, WA 98104  
(206) 587-2308

☒ U.S. MAIL  
☐ HAND DELIVERED  
☐ OVERNIGHT MAIL  
☒ FACSIMILE

Frank and Sydney Chapin  
P.O. Box 781  
Sandpoint, ID 83864  
(208) 263-3390

☒ U.S. MAIL  
☐ HAND DELIVERED  
☐ OVERNIGHT MAIL  
☒ FACSIMILE


  
Bruce A. Anderson

Exhibit "A"

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2002 DEC 11 A 11:03

MARIE SCOTT  
CLERK DISTRICT COURT  
Jm  
DEPUTY

TAMARA W. MUROCK  
BRIAN T. MCGINN  
WINSTON & CASHATT  
250 Northwest Boulevard, Suite 107A  
Coeur d'Alene, Idaho 83814  
Telephone: (208) 667-2103

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF BONNER

FREDRICK A. LEAF

Plaintiff,

vs.

FINANCIAL MANAGAMENT SERVICES,  
INC., an Idaho corporation; S and F, LLC, an  
Idaho limited liability company; FRANK L.  
CHAPIN, P.A., an Idaho professional  
association; and HOODOO MOUNTAIN  
RANCHETTE TRUST, an Idaho irrevocable  
trust,

Defendants.

)  
)  
) Case No. 6 V-02-01655  
)  
) COMPLAINT  
) AND  
) DEMAND FOR JURY TRIAL  
)  
)  
) Fee Category: A(1)  
) Fee: \$77.00  
)  
)  
)  
)

Plaintiff, Fredrick Leaf, M.D., by and through his attorneys Brian T. McGinn and Tamara W.  
Murock of Winston & Cashatt, complains of Defendants, and each of them, and alleges as follows:

COMPLAINT AND  
DEMAND FOR JURY TRIAL  
PAGE 1

ASSIGNED TO STEVE VERBY  
DISTRICT JUDGE

LAW OFFICES OF  
*Winston & Cashatt*  
250 NORTHWEST BLVD., SUITE 107A  
COEUR D'ALENE, IDAHO 83814  
(208) 667-2103  
FAX (208) 765-2121

I  
PARTIES

1.1 Plaintiff, Fredrick A. Leaf, M.D., is a resident of King County, Washington, a co-personal representative of the Estate of Wilbur Leaf, and the former co-personal representative of the Estate of Christina Leaf.

1.2 Plaintiff is informed and believes, and therefore alleges that Defendant Financial Management Services, Inc. is a corporation organized and existing under the laws of the state of Idaho, wholly owned and managed by Frank L. Chapin and his wife, Sydney L. Gutierrez-Chapin, and having its principal place of business in Sandpoint, Bonner County, Idaho.

1.3 Plaintiff is informed and believes, and therefore alleges that Defendant S and F, LLC is a limited liability company organized and existing under the laws of the state of Idaho, wholly owned and managed by Frank L. Chapin and his wife, Sydney L. Gutierrez-Chapin, and having its principal place of business in Priest River, Bonner County, Idaho.

1.4 Plaintiff is informed and believes, and therefore alleges that Defendant Frank L. Chapin, P.A. is a professional association organized and existing under the laws of the state of Idaho, wholly owned and managed by Frank L. Chapin, and having its principal place of business in Sandpoint, Bonner County, Idaho.

1.5 Plaintiff is informed and believes, and thereon alleges that Defendant Hoodoo Mountain Ranchette Trust is an Idaho Irrevocable Trust, administered by its Trustee, Frank L. Chapin, in Priest River, Bonner County, Idaho.

II  
JURISDICTION AND VENUE

2.1 This cause of action arises in the First Judicial District of the State of Idaho, in that all acts and



1 transactions alleged herein took place in Bonner County, Idaho, and all Defendants reside, do business  
2 and are administered in Bonner County, Idaho.

3  
4 III  
GENERAL ALLEGATIONS

5 3.1 Wilbur and Christina Leaf were husband and wife. Wilbur Leaf passed away on December 20,  
6 1993.

7 3.2 Plaintiff is informed and believes, and therefore alleges, that on June 22, 1994, the Last Will and  
8 Testament of Wilbur Leaf was admitted to probate as a non-intervention Will in the Superior Court of  
9 Spokane County case *In the Matter of the Estate of Wilbur A. Leaf*, Cause No. 94-4-00731-1. Christina  
10 Leaf was named as the Personal Representative of the Estate. On March 30, 1995, Personal  
11 Representative Christina Leaf filed an Inventory and Appraisement showing the fair net value of Wilbur  
12 Leaf's Estate as \$1,982,453.75.

14 3.3 Christina Leaf passed away on August 1, 1995. On November 14, 1995, Frank L. Chapin and  
15 Frederick A. Leaf, M.D., were appointed as successor Co-Personal Representatives of the Estate of  
16 Wilbur Leaf.

18 3.4 Frederick A. Leaf is a medical doctor residing in Seattle, Washington, and the nephew of Wilbur  
19 and Christina Leaf.

21 3.5 Plaintiff is informed and believes, and therefore alleges, that Frank L. Chapin is an accountant  
22 doing business as Frank L. Chapin, P.A., Licensed Public Accountants. In such capacity, Mr. Chapin  
23 knew Mr. and Mrs. Leaf for over thirty years and assisted them in tax preparation, financial planning  
24 and will preparation.

26 3.6 On May 17, 1996, Robert E. Kovacevich, the attorney for the Estate of Christina Leaf, filed a  
Petition for an Order: (1) Probating Will & Appointing Personal Representatives; (2) Adjudicating

1 Estate to be Solvent; and (3) Directing Administration Without Court Intervention in the Spokane  
2 County Superior Court case entitled *In the Matter of the Estate of Christina Leaf*, Cause No. 96 4 00617-

3 5. The Estate of Christina Leaf consisted primarily of funds on deposit with New York Life Insurance  
4 Company ("New York Life") in the amount of \$748,809.14 under policy No. N3-201-681.

5 3.7 Because the Last Will and Testament of Christina Leaf did not contain a provision directing that  
6 the Co-Personal Representatives would serve without bond, Mr. Kovacevich, on September 3, 1996,  
7 filed an Amended Petition with the Court in Cause No. 96 4 00617-5, requesting that, in lieu of posting a  
8 bond, funds in the New York Life account would be blocked from distribution except by further Order  
9 of the Court and read, in pertinent part, as follows:  
10

11 That the co-personal representatives may administer the estate account at the New York  
12 Life Insurance Company, number N3-201-681 only upon further order of the court  
13 disbursing said funds to named recipients. That the co-personal representatives, through  
14 their attorney, will immediately send a certified copy of the proposed order of the court to  
the New York Life Insurance Company so that said company is on notice of this  
restriction. No funds will be distributed from the account without further court order. . . .

15 3.8 On September 3, 1996, the Court in Cause No. 96 4 00617-5, entered an Order Admitting Will to  
16 Probate, Adjudicating and Appointing Frederick A. Leaf and Frank L. Chapin as Co-Personal  
17 Representatives to Act Without Bond (the "Order"). In the Order, the court made various findings and  
18 orders, including:  
19

20 In order to proceed with probate of the estate, the persons seeking to be appointed have  
21 agreed and the Court finds that the funds now held by the New York Life Insurance  
Company shall not be distributed without further order of this Court.

22 \* \* \*

23 A certified copy of this Order shall, within ten (10) days of this Order, be sent to the  
office of New York Life Insurance Company holding funds of the estate.

24 3.9 Plaintiff is informed and believes and therefore alleges that Mr. Kovacevich did not provide a  
25 copy of the Order outlining the restrictions to New York Life, nor did he send Dr. Leaf a copy of the  
26

1 Court's Order or otherwise inform Dr. Leaf of the court's Order prohibiting distribution of the New  
2 York Life funds.

3 3.10 Plaintiff is informed and believes and therefore alleges that after receiving Letters Testamentary  
4 from Mr. Kovacevich, Mr. Chapin caused the New York Life account to be closed. Funds of the Estate  
5 of Christina Leaf in the amount of \$748,809.14 were paid by New York Life to the Estate of Christina  
6 Leaf by check dated September 23, 1996.  
7

8 3.11 Plaintiff is informed and believes, and therefore alleges, that Mr. Chapin, upon receipt of the  
9 check, deposited the New York Life funds into the Estate's account at Panhandle State Bank.

10 3.12 By March 5, 1997, Mr. Chapin made distributions to the heirs of the Estate of Wilbur Leaf  
11 totaling \$947,432.50. However, no distributions were made to the heirs of the Estate of Christina Leaf.  
12

13 3.13 Plaintiff is informed and believes, and therefore alleges, that on February 2, 2001, the  
14 beneficiaries of the Estate of Christina Leaf, by and through their attorney William J. Schroeder,  
15 contacted Mr. Kovacevich and inquired as to the status of the Christina Leaf probate, but received no  
16 information.

17 3.14 On April 5, 2001, the beneficiaries of the Estate of Christina Leaf filed a Petition for an Order  
18 Directing the Co-Personal Representatives to Deliver a Report of the Affairs of the Estate Signed and  
19 Verified by the Co-Personal Representatives.  
20

21 3.15 On May 4, 2001, a Stipulation and Agreed Order re: Production of Documents by May 15, 2001  
22 was filed, wherein Mr. Chapin was to provide to the beneficiaries of the Estate of Christina Leaf by May  
23 15, 2001, the following documents: (1) 706 Estate Tax Return, 1041 Income Tax; (2) 1041 Income Tax  
24 Returns; (3) All 1040 Income Tax Returns of Christina Leaf ; and (4) a complete, detailed and accurate  
25 accounting of the Estate of Christina Leaf from the date of death to April 30, 2001.  
26

1 3.16 These documents were not produced and on May 18, 2001, the beneficiaries of the Estate of  
2 Christina Leaf filed a Motion for Order to Show Cause requesting that Mr. Chapin show cause as to why  
3 he should not be held in contempt for failing to provide the stipulated documents.

4 3.17 On May 31, 2001, a second Motion for Order to Show Cause was filed by the beneficiaries of the  
5 Estate of Christina Leaf requesting that Mr. Chapin show cause as to why he should not be held in  
6 contempt for failing to provide the stipulated documents.

7 3.18 On June 27, 2001, the Court entered an Order which, in part, revoked the prior Order of  
8 September 3, 1996 permitting the Co-Personal Representatives to serve without bond, required the Co-  
9 Personal Representatives to post security in the amount of \$1,250,000, and held Mr. Chapin in contempt  
10 of Court.

11 3.19 On August 17, 2001, the beneficiaries of the Estate of Christina Leaf filed a Motion for Order of  
12 Contempt and to Compel Compliance with the Court's Order Dated June 27, 2001, requesting that Mr.  
13 Chapin be held in contempt for failure to comply with the Court's order of June 27, 2001.

14 3.20 On October 29, 2001, the beneficiaries of the Estate of Christina Leaf filed a civil complaint  
15 against Mr. Chapin and Dr. Leaf, alleging causes of action against Mr. Chapin and Dr. Leaf based upon  
16 breach of fiduciary duties, negligence, conversion, the tort of outrage and fraud. This matter, currently  
17 pending in the Spokane County Superior Court, is entitled *American Lutheran Church, et al., v. Chapin,*  
18 *et al.*, Cause No. 01 2 06413-9.

19 3.21 On November 16, 2001, the Court continued the contempt motion and ordered Mr. Chapin to:  
20 (1) provide to the beneficiaries of the Estate of Christina Leaf a detailed and complete affidavit of his  
21 assets; and (2) pay back to the Estate of Christina Leaf all assets loaned to his company, Financial  
22 Management Services, Inc.

1 3.22 On December 8, 2001, the beneficiaries of the Estate of Christina Leaf filed a Motion for Order  
2 Holding Frank L. Chapin in Contempt for Failure to Comply with Court's November 16, 2001 Order.

3 3.23 On February 15, 2002, the Court found that Mr. Chapin failed to comply with the Court's prior  
4 orders and set a contempt hearing for February 22, 2002.

5 3.24 On February 22, 2002, Mr. Chapin failed to appear at the contempt hearing before the Honorable  
6 Neal Q. Rielly, and a Bench Warrant was issued for his arrest.

7 3.25 On February 22, 2002, Mr. Chapin and his wife, Sydney Gutierrez-Chapin, filed an individual  
8 Chapter 11 Bankruptcy Petition in the Bankruptcy Court for the District of Idaho. Mr. and Mrs.  
9 Chapin's bankruptcy matter is currently pending and is entitled *In Re: Frank L. Chapin and Sydney L.*  
10 *Gutierrez-Chapin a/k/a Sydney L. Gutierrez*, Bankruptcy No. 02-20218.

11 3.26 On or about February 26, 2002, the beneficiaries of the Estate of Christina Leaf filed their  
12 Motion to Compel Co-Personal Representative Frederick A. Leaf, M.D., to Provide an Affidavit of  
13 Assets and Post Security in an Amount to be Determined by the Court. This motion was heard by the  
14 Court on March 22, 2002 and granted. Dr. Leaf was required to post security in the form of a lis  
15 pendens using his personal assets, amounting to \$1,250,000.

16 3.27 On March 22, 2002, the Court entered summary judgment in favor of the beneficiaries of the  
17 Estate of Christina Leaf against Dr. Leaf. Dr. Leaf faces potential exposure of \$1,250,000 as a result of  
18 Mr. Chapin's conduct in administering the Estates of Wilbur and Christina Leaf.

19 3.28 Plaintiff is informed and believes, and therefore alleges, that Frank L. Chapin and Sydney  
20 Gutierrez-Chapin were and continue to be at all times material hereto, the sole owners and directors of  
21 Defendant Financial Management Service, Inc. ("FMS"), and the acts, commissions and omissions of  
22 Mr. and Mrs. Chapin herein were done as officers, agents, servants, business associates, employees,  
23  
24  
25  
26

1 members, managers, or principals of Defendant FMS, on its behalf, and on behalf of, in the furtherance  
2 of, in the interests of, for the benefit of, and within the scope of authority for Defendant FMS.

3 3.29 Plaintiff is informed and believes, and therefore alleges, that Frank L. Chapin and Sydney  
4 Gutierrez-Chapin were and continue to be at all times material hereto, the sole members and managers  
5 of Defendant S and F, LLC, and the acts, commissions and omissions of Mr. and Mrs. Chapin herein  
6 were done as officers, agents, servants, business associates, employees, members, managers, or  
7 principals of Defendant S and F, LLC, on its behalf, and on behalf of, in the furtherance of, in the  
8 interests of, for the benefit of, and within the scope of authority for Defendant S and F, LLC.

10 3.30 Plaintiff is informed and believes, and therefore alleges, that Defendant S and F, LLC was  
11 formed on or about November 1998 for the primary purpose of holding the real estate and equipment  
12 initially purchased by Defendant FMS.

14 3.31 Plaintiff is informed and believes, and therefore alleges, that Frank L. Chapin was and continues  
15 to be at all times material hereto, the sole shareholder and director of Defendant Frank L. Chapin, P.A.,  
16 and the acts, commissions and omissions of Mr. Chapin herein were done as an officer, agent, servant,  
17 business associate, employee, member, manager, or principal of Defendant Frank L. Chapin, P.A., on its  
18 behalf, and on behalf of, in the furtherance of, in the interests of, for the benefit of, and within the scope  
19 of authority for Defendant Frank L. Chapin, P.A.

21 3.32 Plaintiff is informed and believes, and therefore alleges, that Frank L. Chapin was and continues  
22 to be at all times material hereto, the settlor, trustee and life beneficiary of Defendant Hoodoo Mountain  
23 Ranchette Trust, and the acts, commissions and omissions of Mr. Chapin herein were done as a trustee,  
24 agent, servant, business associate, employee, member, or manager of Defendant Hoodoo Mountain  
25  
26

1 Ranchette Trust, on its behalf, and on behalf of, in the furtherance of, in the interests of, for the benefit  
2 of, and within the scope of authority for Defendant Hoodoo Mountain Ranchette Trust.

3 3.33 Plaintiff is informed and believes, and therefore alleges, that beginning on or about June 1994,  
4 Mr. Chapin began depositing funds of the Estate of Wilbur Leaf into a pooled account.

5 3.34 The pooled account was initially established at Panhandle State Bank in Sandpoint, Idaho, but  
6 was transferred to Horizon Credit Union at which time, or shortly thereafter, Mr. Chapin established a  
7 series of pooled bank accounts, all of which are or were at all times material hereto, owned by, in the  
8 name of and under the control of Defendant FMS.

9 3.35 Plaintiff is informed and believes, and therefore alleges, on or about March 5, 1995, Frank  
10 Chapin deposited \$100,977.50 of funds from the Estate of Wilbur Leaf into a pooled account in the  
11 name of Defendant FMS.

12 3.36 Plaintiff is informed and believes, and therefore alleges, that for a period of years beginning June  
13 1994, Mr. Chapin made a series of partial withdrawals of funds of the Estate of Wilbur Leaf from FMS,  
14 and applied such funds for the benefit of Mr. Chapin's various businesses and irrevocable trust.

15 3.37 Plaintiff is informed and believes, and therefore alleges, that on or about April 1995, Defendant  
16 FMS used funds of the Estate of Wilbur Leaf in the amount of \$69,958.96, as a down-payment for the  
17 purchase of two parcels of real property collectively known as the "Glabb Ranch," identified by tax  
18 parcel numbers RP 55N04W344800 A and RP 55N04W345700 A, and more particular described as:

19 The East half of the Southwest Quarter, Government Lots 5 and 6, and the Northwest  
20 Quarter of the Southeast Quarter, all in Section 34, Township 55 North, Range 4 West,  
21 Boise Meridian, Bonner County, Idaho;

22 EXCEPT the Spokane International Railroad right of way.  
23  
24  
25  
26

1 3.38 Plaintiff is informed and believes, and therefore alleges, that the Glabb Ranch was transferred  
2 from Defendant FMS to Defendant S and F, LLC on or about April 13, 2000.

3 3.39 Plaintiff is informed and believes, and therefore alleges, that the Glabb Ranch is currently in the  
4 possession and under the control of Defendant S and F, LLC.

5 3.40 Plaintiff is informed and believes, and therefore alleges, that funds of the Estates of Wilbur and  
6 Christina Leaf were and continue to be used to pay mortgage obligations, lease payments, taxes, costs of  
7 maintenance and improvements, and other expenses incurred in the operations of the Glabb Ranch.

8 3.41 Plaintiff is informed and believes, and therefore alleges, that for a period of years beginning on  
9 or about 1996, Mr. Chapin began depositing funds of the Estate of Christina Leaf into pooled accounts  
10 owned by, and in the name and under the control of Defendant FMS.

11 3.42 Plaintiff is informed and believes, and therefore alleges, that on or about September 30, 1996,  
12 after the New York Life funds in the amount of \$748,809.14 were deposited into the Estate of Christina  
13 Leaf's account at Panhandle State Bank, Mr. Chapin transferred said funds to Defendant FMS.

14 3.43 Plaintiff is informed and believes, and therefore alleges, that for a period of years beginning on  
15 or about 1996, Mr. Chapin loaned, transferred or otherwise made available, the funds of the Estate of  
16 Christina Leaf from FMS to various third parties, including but not limited to Mr. Chapin's various  
17 businesses and irrevocable trust, and caused FMS to enter into promissory notes evidencing some of said  
18 loans.

19 3.44 Plaintiff is informed and believes, and therefore alleges, that on or about October 29, 1997, FMS  
20 executed a promissory note payable to the Estate of Christina Leaf for the principal amount of \$170,000,  
21 said promissory note evidencing a series of distributions to Defendant FMS from the Estate of Christina  
22 Leaf prior to October 29, 1997.



1 3.45 Plaintiff is informed and believes, and therefore alleges, that on or about October 1, 1998, FMS  
2 entered into a second promissory note payable to the Estate of Christina Leaf for the principal amount of  
3 \$170,000, said promissory note evidencing a series of distributions to Defendant FMS from the Estate of  
4 Christina Leaf.

5 3.46 Plaintiff is informed and believes, and therefore alleges, that on or about December 20, 2000,  
6 FMS entered into a third promissory note payable to the Estate of Christina Leaf for the principal  
7 amount of \$100,000, said promissory note evidencing a series of distributions to Defendant FMS from  
8 the Estate of Christina Leaf.

9 3.47 Plaintiff is informed and believes, and therefore alleges, that Defendant FMS received additional  
10 distributions from the Estate of Christina Leaf, all of which are not evidenced by promissory notes.

11 3.48 Plaintiff is informed and believes, and therefore alleges, that on or about August 1993,  
12 Defendant FMS used Estate funds to purchase real property known as the "Jachetta Property," identified  
13 by tax parcel number RP 55N04W103010 A, and more particularly described as:  
14

15  
16 The North half of the Northwest Quarter of the Northwest Quarter of Section 10,  
17 Township 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho;

18 EXCEPTING THEREFROM rights of way of FAS-5780 and FAS-5781.

19 3.49 Plaintiff is informed and believes, and therefore alleges, that the Jachetta Property was  
20 transferred from Defendant FMS to Defendant S and F, LLC on or about April 13, 2000.

21 3.50 Plaintiff is informed and believes, and therefore alleges, the Jachetta Property is currently in the  
22 possession and under the control of Defendant S and F, LLC.

23 3.51 Plaintiff is informed and believes, and therefore alleges, that Estate funds were and continue to  
24 be used to pay mortgage obligations, lease payments, taxes, costs of maintenance and improvements,  
25 and other expenses incurred in the operations of the Jachetta Property.  
26

1 3.52 Plaintiff is informed and believes, and therefore alleges, that on or about September 1994,  
2 Defendant FMS used Estate funds to purchase real property known as the "Linden Property," identified  
3 by tax parcel number RP 55N04W291200 A, and more particular described as:

4 The Southwest Quarter of the Northeast Quarter of Section 29, Township 55 North,  
5 Range 4 West, Boise Meridian, Bonner County, Idaho.  
6 LESS any portion lying within the County Road right of way.

7 3.53 Plaintiff is informed and believes, and therefore alleges, that the Linden Property was transferred  
8 from Defendant FMS to Defendant S and F, LLC on or about April 13, 2000.

9 3.54 Plaintiff is informed and believes, and therefore alleges, that the Linden Property is currently in  
10 the possession and under the control of Defendant S and F, LLC.

11 3.55 Plaintiff is informed and believes, and therefore alleges, that Estate funds were and continue to  
12 be used to pay mortgage obligations, lease payments, taxes, costs of maintenance and improvements,  
13 and other expenses incurred in the operations of the Linden Property.

14 3.56 Plaintiff is informed and believes, and therefore alleges, that on or about 1984 and 1986, Mr.  
15 Chapin purchased two parcels of real property known as the "Home Place," identified by tax parcel  
16 number RP 55N04W294350, and more particularly described as:

17 The South half of the South half of the Northeast quarter of the Northwest quarter and the  
18 Southeast quarter of the Northwest quarter of Section 29, Township 55 North, Range 4  
19 West, Boise Meridian, Bonner County, Idaho, lying North of the County Road;

20 LESS the East 330 feet thereof;

21 and identified by tax parcel number RP 55N04W294200 A, and more particularly described as:

22 The East 330 feet of the South half of the South half of the Northeast quarter of the  
23 Northwest quarter and the East 300 feet of the Southeast quarter of the Northwest quarter  
24 of Section 29, Township 55 North, Range 4 West, Boise Meridian, Bonner County,  
25 Idaho, all lying North of the County Road.

1 3.57 Plaintiff is informed and believes, and therefore alleges, that one or more of the Home Place  
2 parcels were initially transferred to Defendant FMS, and then later transferred to Defendant S and F,  
3 LLC, on or about April 13, 2000.

4 3.58 Plaintiff is informed and believes, and therefore alleges, that the Home Place parcels are  
5 currently in the possession and under the control of Defendant S and F, LLC.

6 3.59 Plaintiff is informed and believes, and therefore alleges, that Estate funds were and continue to  
7 be used to pay mortgage obligations, lease payments, taxes, costs of maintenance and improvements,  
8 and other expenses incurred in the operations of the Home Place parcels.

9 3.60 Plaintiff is informed and believes, and therefore alleges, that on or about November 1998,  
10 Defendant FMS used Estate funds to purchase real property known as the "Dunromin Property,"  
11 identified by tax parcel number RP 55N04W105400, and more particularly described as:  
12

13 The East half of the Northwest Quarter of the Southwest Quarter of Section 10, Township  
14 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho.

15 TOGETHER WITH an easement for ingress, egress and utilities 60.00 feet wide over,  
16 under and across the existing road located in the North portion of the Southwest Quarter  
17 of the Southwest Quarter of said Section 10 from the County Road along the West line  
thereof.

18 ALSO TOGETHER WITH an easement 60 feet wide for ingress, egress and utilities and  
19 maintenance over, under and across the East 60 feet of the Southwest Quarter of the  
20 Southwest Quarter of said Section 10 lying North of the aforementioned road right of  
way.

21 3.61 Plaintiff is informed and believes, and therefore alleges, that the Dunromin Property was  
22 transferred from Defendant FMS to Defendant S and F, LLC on or about April 13, 2000.

23 3.62 Plaintiff is informed and believes, and therefore alleges, that the Dunromin Property is currently  
24 in the possession and under the control of Defendant S and F, LLC.  
25

1 3.63 Plaintiff is informed and believes, and therefore alleges, that Estate funds were and continue to  
2 be used to pay mortgage obligations, lease payments, taxes, costs of maintenance and improvements,  
3 and other expenses incurred in the operations of the Dunromin Property.

4 3.64 Plaintiff is informed and believes, and therefore alleges that for a period of years beginning on or  
5 about 1994, Defendant FMS used Estate funds to purchase various machinery, equipment and vehicles,  
6 including but not limited to tractors, backhoes, campers, and trailers.

7  
8 3.65 Plaintiff is informed and believes, and therefore alleges, that the machinery, equipment and  
9 vehicles initially purchased by Defendant FMS were transferred to Defendant S and F, LLC on or about  
10 April 2000.

11 3.66 Plaintiff is informed and believes, and therefore alleges, that the machinery, equipment and  
12 vehicles are currently in the possession and under the control of Defendant S and F, LLC.

13 3.67 Plaintiff is informed and believes, and therefore alleges, that Estate funds were and continue to  
14 be used to pay purchase obligations, lease payments, taxes, costs of maintenance and improvements, and  
15 other expenses incurred in the operations of the machinery, equipment and vehicles.

16  
17 3.68 Plaintiff is informed and believes, and therefore alleges, that Mr. Chapin purchased a commercial  
18 building and real estate located at 319 Church St., Sandpoint, Idaho 83864, identified by tax parcel  
19 number RP S0389008009 A A, and more particularly described as:

20 Lots 9 and 10 in Block 8 of Sandpoint Addition to Sandpoint, According to the plat  
21 thereof, recorded in Book 1 of Plats, Page 10, records of Bonner County, Idaho;

22 LESS the South 40 feet thereof.

23 3.69 Plaintiff is informed and believes, and therefore alleges, that the commercial building and real  
24 estate was transferred to Defendant Hoodoo Mountain Ranchette Trust on or about April 19, 1991.

1 3.70 Plaintiff is informed and believes, and therefore alleges, that the commercial building and real  
2 estate is currently in the possession and under the control of Defendant Hoodoo Mountain Ranchette  
3 Trust.

4 3.71 Plaintiff is informed and believes, and therefore alleges, that Estate funds were and continue to  
5 be used to pay mortgage obligations, lease payments, taxes, costs of maintenance and improvements,  
6 and other expenses incurred in the operations of the commercial building and real estate.

7 3.72 Plaintiff is informed and believes, and therefore alleges, that for a period of years beginning on  
8 or about 1994, Mr. Chapin has used and continues to use Estate funds to purchase and pay for various  
9 equipment, furniture, supplies, taxes, costs of maintenance and improvements, and operating expenses  
10 incurred in the operations of Mr. Chapin's accounting practice, Frank L. Chapin, P.A.

11 3.73 Plaintiff is informed and believes, and therefore alleges, that it is estimated that the combined  
12 fair market values of the real properties, machinery, equipment, vehicles, and supplies purchased with  
13 Estate funds and currently held by Defendant FMS, Defendant S and F, LLC, Defendant Frank L.  
14 Chapin, P.A. and Defendant Hoodoo Mountain Ranchette Trust may exceed two million dollars and  
15 generate over \$150,000 of gross income annually.

16 3.74 Plaintiff is informed and believes, and therefore alleges, that in August 2001, only \$170,000 of  
17 Estate funds were accounted for and transferred from Defendant FMS to the current personal  
18 representative of the Estate of Christina Leaf, Joseph Delay. Of the original \$748,809.14 of New York  
19 Life funds transferred from the Estate of Christina Leaf to Defendant FMS, \$578,809.14 is unaccounted  
20 for and remains in the possession and control of Defendant FMS, Defendant S and F, LLC, Defendant  
21 Frank L. Chapin, P.A., and/or Hoodoo Mountain Ranchette Trust.

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IV  
FIRST CAUSE OF ACTION  
Conversion

4.1 Plaintiff realleges and incorporates by reference the averments contained in paragraphs 1 through 3 above.

4.2 Defendants, by and through their officers, agents, trustees, employees, managers or principals, who at all material times hereto, acted on behalf of, in the furtherance of, in the interests of, for the benefit of, and within the scope of authority for Defendants, wrongfully exerted dominion and control over the money and personal property belonging to the Estates of Wilbur and Christina Leaf.

4.3 Defendants' actions constitute an unwarranted interference with and denial of the Estates' ownership rights in and to the Estate's money and personal property.

4.4 Defendants' actions constitute conversion.

4.5 As a direct and proximate result of Defendants' conversion of the Estates' money and property, Plaintiff has suffered damages in an amount in excess of \$1,250,000.

V  
SECOND CAUSE OF ACTION  
Unjust Enrichment

5.1 Plaintiff realleges and incorporates by reference the averments contained in paragraphs 1 through 4 above.

5.2 Defendants, by and through their officers, agents, trustees, employees, managers or principals, who at all material times hereto, acted on behalf of, in the furtherance of, in the interests of, for the benefit of, and within the scope of authority for Defendants, obtained or otherwise received money and property belonging to the Estates of Wilbur and Christina Leaf, and have been benefited and enriched therefrom.

1 5.3 Based upon the circumstances, it would be unjust for Defendants to retain the benefits thereby  
2 received.

3 5.4 As a direct and proximate result of Defendants' unjust enrichment, Plaintiff has suffered  
4 damages in an amount in excess of \$1,250,000.  
5

6 VI  
7 THIRD CAUSE OF ACTION  
8 Imposition of Resulting and/or Constructive Trust

9 6.1 Plaintiff realleges and incorporates by reference the averments contained in paragraphs 1 through  
10 5 above.

11 6.2 Defendants, by and through their officers, agents, trustees, employees, managers or principals,  
12 who at all material times hereto, acted on behalf of, in the furtherance of, in the interests of, for the  
13 benefit of, and within the scope of authority for Defendants, transferred and converted money and  
14 property the beneficial interest of which belongs to and is intended for the Estates of Wilbur and  
15 Christina Leaf and the beneficiaries thereof.

16 6.3 Defendants have been unjustly enriched at the expense of the Estates, the beneficiaries thereof,  
17 and Plaintiff.

18 6.4 Plaintiff is entitled to judgment requiring all of Defendants' real properties, machinery,  
19 equipment, vehicles, and supplies purchased or otherwise obtained or supported with the Estates' funds,  
20 including any and all proceeds therefrom, be impressed into a constructive trust to bring the funds back  
21 from their transfer and conversion; that further, such funds should be impressed into a constructive trust  
22 for the benefit of Plaintiff.  
23

24 6.5 Plaintiff is entitled to judgment requiring all of Defendants' real properties, machinery,  
25 equipment, vehicles, and supplies purchased or otherwise obtained or supported with the Estates' funds,  
26

1 including any and all proceeds therefrom, be subject to a resulting trust which, by operation of law,  
2 requires the return of all funds from their transfer and conversion; that further, such funds are subject to  
3 a resulting trust for the benefit of Plaintiff.

4  
5 VII  
6 FOURTH CAUSE OF ACTION  
7 Indemnification, Setoff, Contribution and/or Subrogation

8 7.1 Plaintiff realleges and incorporates by reference the averments contained in paragraphs 1 through  
9 6 above.

10 7.2 Plaintiff is entitled to collect damages and obtain relief against Defendants by indemnification,  
11 setoff, contribution and/or subrogation, for all damages arising from Defendants' actions and omissions.

12 VIII  
13 JURY DEMAND

14 8.1 Plaintiff hereby demands a trial by jury of twelve (12) of all issues triable of right by a jury.

15  
16 **WHEREFORE**, Plaintiff prays for judgment jointly and severally against Defendants as  
17 follows:

18 1. That a judgment be entered in favor of Plaintiff and against Defendants in an amount in  
19 excess of \$1,250,000, plus interest accruing with pre- and post-judgment interest as allowed by law;

20 2. That the Court impress a constructive trust upon funds of the Estates of Wilbur and  
21 Christina Leaf held by Defendants, and upon any real or personal property purchased or otherwise  
22 obtained or supported through use of the funds of the Estates of Wilbur and Christina Leaf, including  
23 any and all proceeds therefrom, and that the Court order that all funds and real or personal property  
24 subject to the constructive trust be delivered or transferred to Plaintiff;  
25  
26

COMPLAINT AND  
DEMAND FOR JURY TRIAL  
PAGE 18

LAW OFFICES OF  
*Winston & Cashall*  
250 NORTHWEST BLVD., SUITE 107A  
COEUR D'ALENE, IDAHO 83814  
(208) 667-2103  
FAX (208) 765-2121



3. That the Court determine that a resulting trust is impressed upon funds of the Estates of Wilbur and Christina Leaf held by Defendants, and upon any real or personal property purchased or otherwise obtained or supported through use of the funds of the Estates of Wilbur and Christina Leaf, including any and all proceeds therefrom, and that the Court order that all funds and real or personal property subject to the resulting trust be delivered or transferred to Plaintiff;

4. That Plaintiff be awarded his attorneys' fees and costs against Defendants as allowed by applicable law; and

5. That Plaintiff be awarded such other and further relief as the Court deems just and proper.

DATED this 5th day of December, 2002.

*Janara L. Murock*

TAMARA W. MUROCK, ISB No. 5886  
BRIAN T. McGINN, ISB No. 5882  
WINSTON & CASHATT  
Attorneys for Plaintiff

1  
2 VERIFICATION

3 STATE OF WASHINGTON )  
4 County of King ) ss.  
5

6 FREDERICK A. LEAF, M.D., being first duly sworn upon oath, deposes and says:

7  
8 That he is the plaintiff herein; that he has read the foregoing Complaint and Demand for Jury  
9 Trial, knows the contents thereof, and believes the same to be true.

10 Frederick A. Leaf MD  
11 FREDERICK A. LEAF, M.D.  
12

13 SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of December, 2002.  
14

15 Sandra Fontaine  
16 Notary Public in and for the State of  
17 Washington, residing at 1100 9th Ave  
18 My appointment expires 05.19.03  
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